

STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

August 10, 2015 - 1:32 p.m.
Concord, New Hampshire

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RE: DE 15-251
EVERSOURCE ENERGY:
*Complaint by Robert Fisher against
Eversource Energy.*

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Robert Fisher, *pro se*

Reptg. Public Service Co. of New Hampshire
d/b/a Eversource Energy:
Matthew J. Fossum, Esq.

Reptg. PUC Staff:
Michael J. Sheehan, Esq.
Amanda O. Noonan, Dir./Consumer Affairs Div.

Court Reporter: Steven E. Patnaude, LCR No. 52

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 NICK ZARICKI
 JOSH YOUSSEF**

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: We're here this
3 afternoon in Docket DE 15-251, which is a complaint of
4 Robert Fisher against Eversource. I think, procedurally,
5 we're in a situation where Mr. Fisher is asking for the
6 Commission to reconsider the ruling on his complaint that
7 was delivered through a secretarial letter.

8 Before we go any further, let's take
9 appearances, starting over here.

10 MR. FISHER: Hi there. Robert Fisher.

11 MR. SHEEHAN: Good afternoon.

12 Commission Staff, represented by Mike Sheehan, and with me
13 is Amanda Noonan.

14 MR. FOSSUM: And, good afternoon,
15 Commissioners. Matthew Fossum, here for Public Service
16 Company of New Hampshire doing business as Eversource
17 Energy.

18 CHAIRMAN HONIGBERG: I know, Mr. Fossum,
19 you filed something suggesting that we didn't need to do
20 much in the way of evidence. I think we agree, in part,
21 with what you said, although not fully. I think, Mr.
22 Fisher, it's fair to say that the part that we agree with
23 you might also agree with, that the basic underlying fact
24 of payments, notices, *etcetera*, is not really in dispute,

1 is that right?

2 MR. FISHER: That is correct. The
3 timeline is not in dispute.

4 CHAIRMAN HONIGBERG: Really, the issue
5 boils down to "what does "good standing" mean in this
6 context?" Does everybody agree with that?

7 MR. FISHER: Yes.

8 MR. FOSSUM: Yes.

9 CHAIRMAN HONIGBERG: Mr. Sheehan, you
10 have anything you want to offer on this?

11 MR. SHEEHAN: Just briefly. You had a
12 slight misstatement at the beginning. The Commission, in
13 fact, granted the Motion to Reconsider. And, this is, in
14 fact, the hearing that would have happened the first time
15 around, if there had been a hearing, rather than a
16 secretarial letter.

17 CHAIRMAN HONIGBERG: Fair enough. Thank
18 you for that clarification. That's right. We did
19 actually grant the Motion to Reconsider, and that is what
20 we are now doing, right? Right. Okay.

21 So, that aside, the procedural niceties
22 aside, how do we want to proceed with respect, that it
23 seems to me Mr. Fisher's witnesses want to offer testimony
24 about what "good standing" means in the commercial arena,

1 and how -- what it means in our rules, based on what it
2 means in other contexts. Is that about right, Mr. Fisher?

3 MR. FISHER: That's correct. I also
4 have an opening statement, if there's an opportunity.

5 CHAIRMAN HONIGBERG: We'll get there.
6 We'll get there. I'm just trying to figure out what we're
7 going to do from this point forward, but I appreciate your
8 letting me know that.

9 Mr. Fossum, do you have witnesses you
10 want to put on with respect to that or you just intend to
11 question Mr. Fisher's witnesses?

12 MR. FOSSUM: I had intended only very
13 briefly to question Mr. Fisher's witnesses. We do have
14 one witness that we would present to testify about how
15 Eversource has interpreted and -- well, previously PSNH
16 and Northeast Utilities had interpreted and applied the
17 regulations that are at issue here. So, it would be just
18 very limited testimony on that issue.

19 CHAIRMAN HONIGBERG: Mr. Sheehan, what's
20 your expectation for how you'd be participating, other
21 than correcting my mistakes, which is always helpful?

22 MR. SHEEHAN: We do not intend to
23 present any testimony. And, we are largely here as
24 observers, to answer any questions that the Commission may

1 have. We may have a position ultimately in this case, we
2 do, but we don't intend to offer witnesses or even to
3 cross-examine, unless the witnesses get into areas of
4 conduct that they may have -- that the Commission Staff
5 may have engaged in, but I don't think that's going to
6 come up.

7 CHAIRMAN HONIGBERG: Okay. So, what
8 we're going to do is, if the parties want to make brief
9 openings, they may, and then we'll start with witnesses
10 and see how quickly we can get through this.

11 Good enough. Mr. Fisher, you want to
12 proceed? Oh, Mr. Fossum. Yes, I'm sorry.

13 MR. FOSSUM: Just one process question I
14 had hoped to answer before we began that. In the
15 Commission's July 20th letter, it had asked -- well, not
16 so much "asked" as "required", that the parties file the
17 witness statements that have been submitted, as well as
18 the evidentiary documents that had been submitted. Just
19 as a matter of process, I was curious to know how the
20 Commission wanted those treated or referred to? The
21 normal process I know would be to identify a document for
22 purposes of the record, later have objections, but there
23 was also a ruling in the letter that the Commission's
24 normal process would be set aside to the extent necessary

1 to complete this matter.

2 So, I guess, just as a matter of
3 process, I'm trying to understand, for instance, the
4 exhibits that we submitted, how they would be ultimately
5 included in the record?

6 CHAIRMAN HONIGBERG: Make me an offer.
7 How do you want to do it? I mean, we're not -- there's no
8 magic to this. We're just trying to make sure that the
9 parties have the documents that they want to get in front
10 of us in front of us, marked and identified, so that, if
11 this goes to another level, people can figure out what
12 we're all talking about. So, I'm flexible, I think.

13 MR. FOSSUM: So far as I'm concerned,
14 all of the documents that were provided with the
15 submissions of the parties last -- this past Friday, the
16 7th, are fine to be entered into the record. I would not
17 object to that.

18 CHAIRMAN HONIGBERG: There were also
19 submissions, Mr. Fisher made a submission dated July 29th,
20 and you made a submission dated July 24th. Are you
21 including those in what you just said?

22 MR. FOSSUM: I would have no problem
23 including either of those either.

24 CHAIRMAN HONIGBERG: Mr. Fisher?

1 MR. FISHER: I have no problem with
2 that.

3 CHAIRMAN HONIGBERG: Let's go off the
4 record for a second.

5 (Brief off-the-record discussion
6 ensued.)

7 CHAIRMAN HONIGBERG: So, we're going to
8 mark four exhibits. They're the four submissions that the
9 parties made. And, we'll do them by party. We'll do
10 Mr. Fisher's -- we'll identify Mr. Fisher's first, and
11 then we'll identify Eversource's.

12 So, "Exhibit 1" will be Mr. Fisher's
13 July 29th submission. "Exhibit 2" will be Mr. Fisher's
14 August 5th submission. "Exhibit 3" will be Eversource's
15 July 24th submission. And, "Exhibit 4" will be
16 Eversource's August 7th submission.

17 (The documents, as described, were
18 herewith marked as **Exhibit 1, Exhibit 2,**
19 **Exhibit 3,** and **Exhibit 4,** respectively,
20 for identification.)

21 CHAIRMAN HONIGBERG: Is everybody on the
22 same page?

23 (No verbal response)

24 CHAIRMAN HONIGBERG: Is there anything

1 else in the procedural department, before we take brief
2 openings?

3 (No verbal response)

4 CHAIRMAN HONIGBERG: Seeing nothing, Mr.
5 Fisher, you may proceed.

6 MR. FISHER: Thank you. Today we are
7 here to determine if Eversource's deposit policy is in
8 line with the Public Utilities Commission's Administrative
9 Rules. I believe that it is not. The Administrative Rule
10 1203.03, Paragraph (i) has the language: "In lieu of
11 deposit, the utility shall accept the irrevocable written
12 guarantee of a responsible party such as a social service
13 organization, a municipal welfare agency, a bank, or a
14 customer in good standing of the utility as a surety for a
15 customer service account, provided that any such guarantee
16 shall be in writing; include the maximum amount
17 guaranteed; and specify that the utility shall not hold
18 the guarantor liable for the sums in excess of the maximum
19 amount guaranteed unless agreed to in a separate written
20 agreement".

21 Today, we'll be hearing from Sam Fisher,
22 who attempted to write a guarantee on my behalf to satisfy
23 the administrative rule. Despite being in line with the
24 regulation, Eversource has decided not to accept the

1 guarantee on the grounds that a customer with no
2 arrearages was not sufficient to be considered a customer
3 "in good standing". But, rather, the customer had to have
4 twelve months of history with no arrearages to be
5 considered "in good standing". There is no language in
6 the administrative rules to consider such a burdensome
7 stipulation, nor any commonly accepted definition of the
8 term "in good standing" that would subject this.

9 In the written decision dated June 8th
10 by the Commission, the Commission plainly states that the
11 instances where a phrase or word that is not explicitly
12 defined within the rules, the "common understanding"
13 should be used.

14 Therefore, this hearing today is not to
15 determine whether Eversource's policy makes business or
16 financial sense, or whether it's reasonable, we are here
17 to determine whether the policy follows the regulations
18 set forth by the Public Utilities Commission.

19 To do so, we must determine if
20 Eversource's definition of "good standing" is the common
21 understanding of the term "good standing". By any
22 layman's standards, the definition of "good standing" is
23 clear: A customer who is current on their account, all
24 amounts owed paid, and any fees, including late fees, paid

1 as well.

2 Any average person who has a credit card
3 is familiar with this construct. If you miss a minimum
4 payment, you get a fee. If you pay the fee and you pay
5 your minimum, you're in good standing. They don't care
6 what your history is, they just want to make sure you're
7 current.

8 Eversource, in contrast, determined that
9 they wanted a specific definition, one that is not shared
10 by many. In fact, it's one that is entirely unheard of by
11 anybody I talked to about this since it came up. That's
12 not a strong case for a common understanding.

13 What facets would determine the common
14 understanding? First, it would need to be common among
15 businesses or entities that use the phrase. When doing
16 business with a company that has a "good standing" rule,
17 any definition that strays from the common understanding
18 would be separately stipulated. Some examples of entities
19 that use that phrase, credit card companies, New Hampshire
20 Bar, Secretary of State, and even other utilities.

21 Second, it would need to be commonly
22 understood to the average citizen, to a reasonable person,
23 who would do business or have other dealings with any of
24 these entities. It cannot be considered "common" if it

1 does not pass both these tests. A definition that the
2 public does not know is "uncommon", and certainly cannot
3 be applied as law without additional language to bring the
4 public into the understanding.

5 Likewise, it cannot pass the first test,
6 if one business has as specific definition that is not in
7 common with other businesses, as no reasonable person
8 would be able to predict or anticipate what such a
9 specific definition might be, keeping in mind the use of
10 plain English in the rules, and the understanding of the
11 definition used by most other businesses and entities. If
12 a business wanted to use a specific understanding of a
13 phrase, they would need to stipulate in addition to or in
14 place of the common phrase --

15 CHAIRMAN HONIGBERG: Mr. Fisher, you're
16 doing a great job of doing this slowly, so Mr. Patnaude
17 can get it down. But every once in a while you start to
18 speed up.

19 MR. FISHER: I'm sorry.

20 CHAIRMAN HONIGBERG: Just keep it at a
21 nice even pace, so Mr. Patnaude can keep up with you.
22 Sorry to interrupt.

23 MR. FISHER: If a business wanted to use
24 a specific understanding of a phrase, they would need to

1 stipulate in addition to or in place of the common phrase,
2 to make it clear that they are not using the common
3 definition.

4 It's important to note here that neither
5 businesses, nor people, are allowed to impute or add
6 additional language to a law or regulation, as this
7 regulation that serves to govern that very business.
8 Businesses do not define the laws, and I, for one, am very
9 happy about that.

10 Today we will find that Eversource's
11 definition of "good standing" meets none of this criteria.
12 It is neither common among businesses nor government
13 entities that use it. Nor is it a definition that a
14 reasonable person would have understood given no
15 additional language. In fact, we will also find that not
16 even other utilities share this understanding of "good
17 standing". Thank you.

18 CHAIRMAN HONIGBERG: Mr. Fossum, do you
19 want to say anything now or do you want to wait until it's
20 your turn to put on a case?

21 MR. FOSSUM: I had intended to wait for
22 a closing argument. So, I will forgo an opening statement
23 for now. Thank you.

24 CHAIRMAN HONIGBERG: That's fine. Mr.

1 Fisher, typically, when one party is, in this context, is
2 going to put on multiple witnesses or are largely
3 testifying to the same types of things, we put them all up
4 together, and you can question them one at a time, and
5 then they can all be questioned by the others as a group.

6 Does that work for you? It tends to get
7 a little quicker.

8 MR. FISHER: Yes. I have no objection
9 to that.

10 CHAIRMAN HONIGBERG: All right. So, why
11 don't you have your witnesses take the stand.

12 MR. FISHER: Okay.

13 MR. FOSSUM: I guess one other process
14 question, while the witnesses are working their way up
15 there. Is that Mr. Fisher himself has filed a statement
16 in this case, and I didn't know if he intended to take the
17 stand and how that would be addressed?

18 CHAIRMAN HONIGBERG: That's a good
19 point. Mr. Fisher, do you intend to offer testimony, as
20 well as the types of arguments you've just been making?

21 MR. FISHER: My understanding of the
22 procedure was not, that I would have an opening statement,
23 so that was my prepared statement. So, no, I don't intend
24 on anything additionally.

1 CHAIRMAN HONIGBERG: Mr. Fossum, do you
2 have questions that you want to ask of Mr. Fisher now?
3 Understanding that what he's done is not under oath, he's
4 basically made an argument. That's pretty much pure
5 argument what he did. Do you want to ask him questions
6 under oath or do you want to just go with the three
7 witnesses who will be sworn in? Because we can swear him
8 in, I think, if we need to. Do you want to think about
9 that, while we deal with the other three witnesses?

10 MR. FOSSUM: I will. Initially, as I'm
11 looking through my notes here, I don't believe that I
12 would have any questions that would require him to be
13 under oath or to testify. And, I believe his argument has
14 addressed a number of the issues that I would have asked
15 him about anyway. So, for now, I don't think it necessary
16 to have him up there.

17 CHAIRMAN HONIGBERG: Okay. Let me just
18 check with the other Commissioners and see if there's
19 anything they might want to ask that would require
20 Representative Fisher to be under oath.

21 (Chairman and Commissioners conferring.)

22 CHAIRMAN HONIGBERG: Yes. I don't think
23 so. So, I think we're going to go as it looks like we're
24 going.

[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 So, Mr. Patnaude, would you like to
2 swear the witnesses in please.

3 (Whereupon **Samuel Fisher, Nick Zaricki,**
4 and **Josh Youssef** were duly sworn by the
5 Court Reporter.)

6 MR. FISHER: Is there a place you'd
7 prefer me to stand with a microphone or should I do it
8 from here?

9 CHAIRMAN HONIGBERG: Stay where you are.

10 MR. FISHER: Okay. So, --

11 CHAIRMAN HONIGBERG: Mr. Fisher, if
12 there is something you want to show them, feel free to
13 approach them at any time. Just everybody is more
14 comfortable if they're sitting down, and no need for us to
15 do anything more formal than that.

16 MR. FISHER: Okay. Thank you.

17 **SAMUEL FISHER, SWORN**

18 **NICK ZARICKI, SWORN**

19 **JOSH YOUSSEF, SWORN**

20 **DIRECT EXAMINATION**

21 BY MR. FISHER:

22 Q. So, my first questions are for Sam Fisher. According
23 to the timeline of events here, you contacted
24 Eversource on April 13th, 2015, to offer a written

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 guarantee on behalf of myself, is that correct?

2 A. (Fisher) That is correct.

3 Q. Did they accept this guarantee?

4 A. (Fisher) They did not.

5 Q. Why did they tell you they did not accept the
6 guarantee?

7 A. (Fisher) They informed me that I would have had to have
8 had service for over twelve months before I'd be able
9 to offer that.

10 Q. How long had you had your Eversource account at that
11 point?

12 A. (Fisher) I had had my Eversource account since February
13 of that year.

14 Q. So, that would be two months?

15 A. (Fisher) Two months, yes.

16 Q. How long have you had your Eversource account now?

17 A. (Fisher) I have had it for -- so, six months now.

18 Q. Six months. So, despite having had your account for
19 two months, they declined your written guarantee
20 because you weren't -- because your account was less
21 than twelve months old, correct?

22 A. (Fisher) That is correct.

23 Q. Okay. Okay. So, I do have an exhibit that I had
24 submitted earlier. It's "Exhibit G".

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 CHAIRMAN HONIGBERG: Which package is it
2 part of?

3 MR. FISHER: That is Package 2. Exhibit
4 G.

5 BY MR. FISHER:

6 Q. Is this a letter from your landlord?

7 A. (Fisher) Yes, it is.

8 Q. And, what does that state?

9 A. (Fisher) The letter states that, with my landlord, I
10 have made full payments in a timely manner, and am in
11 good standing.

12 Q. And, how long have you had that apartment?

13 A. (Fisher) I have had that apartment for six months.

14 Q. So, you've had that apartment for the same amount of
15 time you've had your Eversource account?

16 A. (Fisher) That is correct.

17 Q. Okay. And, it's been less than twelve months?

18 A. (Fisher) That is correct.

19 Q. So, you are considered a customer "in good standing" of
20 the landlord, despite having the account the same
21 amount of time as the utility account?

22 A. (Fisher) That is correct.

23 Q. Okay. My next questions are for Josh Youssef. Josh,
24 you own a number of New Hampshire small-based -- New

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Hampshire-based small businesses, is this correct?

2 A. (Youssef) Yes.

3 Q. Can you state a small handful of the businesses?

4 A. (Youssef) Atlantic Property Management, we own
5 commercial and residential rental properties; Same Day
6 Computer, which is a small franchise system comprised
7 in computer repair and upgrade stores, as well as
8 on-site business services and IT support; Faster
9 Thinking Technologies, we develop customer software for
10 businesses.

11 Q. So, you offer tech-related services, as well as, am I
12 understanding correctly, you also do leasing or renting
13 of properties?

14 A. (Youssef) Yes.

15 Q. Okay. Do you have any customers in any of those
16 businesses in which you collect payment after a service
17 is complete?

18 A. (Youssef) Hundreds, if not over a thousand. Sure.

19 Q. If a customer has not paid their bill, does your --
20 does your business consider them a "customer in good
21 standing"?

22 A. (Youssef) We expect payment within a certain amount of
23 time. When we issue an invoice, we want payment within
24 30 days. And, if they go beyond that, they will get a

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 notice. And, if they go beyond 45 days, they get a
2 second notice. At which point they will have until 60
3 days, and then they fall into a category of "not good
4 standing".

5 Q. Would you perform new services for a customer who's not
6 in good standing?

7 A. (Youssef) No.

8 Q. What steps does the customer have to take to return to
9 "good standing" status with your businesses?

10 A. (Youssef) They need to pay all amounts that are past
11 due.

12 Q. So, a customer who has paid bills late can return to
13 good standing as soon as they've paid all amounts due?

14 A. (Youssef) Sure. Absolutely.

15 Q. Is there any time requirement for a customer to stay
16 current before you consider them "in good standing"?

17 A. (Youssef) No. Because they couldn't continue to do
18 business with me, if they were in bad standing. So, --

19 Q. Would you immediately perform new services for a
20 customer after they return to good standing?

21 A. (Youssef) Sure. Yes.

22 Q. Would you consider your definition of "good standing"
23 to be commonly accepted doing business in New
24 Hampshire?

[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 A. (Youssef) Yes.

2 MR. FISHER: Okay. That's all my
3 questions for Mr. Youssef. And, finally, I do have some
4 exhibits for Representative Zaricki. So, I'm just going
5 to bring them all up right now.

6 (Mr. Fisher handing documents to Witness
7 Zaricki.)

8 CHAIRMAN HONIGBERG: Are those also what
9 are part of Exhibit 2?

10 MR. FISHER: Yes. I'll let you know
11 which ones. So, that is Exhibits A, B, and C, and D.

12 BY MR. FISHER:

13 Q. So, Representative Zaricki, on June 10th, you contacted
14 Eversource to offer a written guarantee on my behalf as
15 a responsible party, is that correct?

16 A. (Zaricki) Yes.

17 Q. What was the outcome of that phone call?

18 A. (Zaricki) I was told that, since I don't have a
19 Eversource account, I don't qualify to make the written
20 guarantee.

21 Q. Now, you've done some research on the case that Sam
22 Fisher was declined by Eversource, is that correct?

23 A. (Zaricki) Correct.

24 Q. And, what did you do for that research?

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 A. (Zaricki) I researched what the various definitions of
2 "good standing" were, particularly with the other
3 utilities in New Hampshire.

4 Q. Now, Exhibit C there that I've handed you, is that the
5 e-mail you received in response to contacting New
6 Hampshire Electric Co-op?

7 A. (Zaricki) Yes, it is.

8 Q. Can you read the last paragraph?

9 A. (Zaricki) "NHEC's Terms and Conditions also provide
10 that member deposits are credited to current member
11 electric bills when there has been 24 consecutive
12 months without an arrearage. These provisions seem
13 somewhat analogous to a "member in good standing" type
14 standard."

15 Q. Does the letter state that the Co-op has a working
16 definition of "good standing" currently?

17 A. (Zaricki) It states the opposite.

18 Q. So, according to the text, they have a deposit return
19 policy of returning deposits to customers who have had
20 an account for 24 months without arrearages, and they
21 consider that analogous to a definition of "good
22 standing", is that correct?

23 A. (Zaricki) Correct.

24 Q. Okay. In PUC order dated June 8th, the PUC illustrates

[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Eversource's definition of "customer in good standing"
2 as "a customer with a history of twelve timely payments
3 without arrearages". Would you say that these two
4 definitions are similar?

5 A. (Zaricki) There seems to be an obvious discrepancy.

6 Q. Now, if you could look at Exhibit B, are these
7 transcripts that you had of conversations with Unitil
8 customer service reps?

9 A. (Zaricki) Yes.

10 Q. Can you briefly just read the underlined portions of
11 those, of that exhibit?

12 A. (Zaricki) "I spoke" -- pardon me. This is the Unitil
13 Customer Service Rep speaking: "I spoke with the
14 manager and they said a customer in good standing would
15 be if a customer is current on their payments and paid
16 on time. Myself: Ok. Is there a length of service
17 component to that? For instance, does a customer need
18 to be with Unitil for a set time period before they're
19 in good standing?" Customer Service Rep: No."

20 A quick question. Am I continuing to

21 Page 2?

22 Q. Yes. If you could read, this is a second conversation
23 you had with a separate Rep?

24 A. (Zaricki) Correct.

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1 Q. Okay.

2 A. Second Unitil Customer Service Rep: "A customer in
3 good standing would be a customer who is current on
4 their payments and pays their bills on time." I then
5 ask the same question: "Is there a length of service
6 component for that? For instance, does a customer need
7 to be with Unitil for a set time period, like six
8 months or year, before they're in good standing?
9 Unitil Rep: No."

10 Q. So, in these transcripts, both customer service
11 representatives described a customer in good standing
12 as a customer who is "current on their payments and
13 pays their bills on time", is that correct?

14 A. (Zaricki) Correct.

15 Q. Did they detail any length requirement for a customer
16 account to be considered "in good standing"?

17 A. (Zaricki) None whatsoever.

18 Q. Do these definitions share much in common with
19 Eversource's "twelve timely payments"?

20 A. (Zaricki) No.

21 Q. And, if you could just look at Exhibit A. Is this the
22 transcript of the conversation you had with a customer
23 service representative at Liberty Utilities?

24 A. (Zaricki) Yes.

[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Q. Can you read the underlined portion?

2 A. "Liberty Utilities Customer Service Representative:
3 Okay. It looks like we consider a customer in good
4 standing as long as they haven't missed or been late on
5 more than three payments. Myself: Ok. So, just
6 staying current on payments qualifies as a customer in
7 good standing? Liberty Rep: Yes. Myself: There is
8 no length of service requirement of say six months or a
9 year? Liberty Representative: No."

10 Q. So, it would appear that Liberty Utilities defines
11 "customer in good standing" as "a customer who has
12 missed or been late on no more than three payments"?

13 A. (Zaricki) It would appear that way, correct.

14 Q. Does Unitil indicate that there's a time requirement
15 for the customer to be considered in good standing?

16 A. (Zaricki) No.

17 Q. Is this definition of "good standing" similar to
18 Eversource's "twelve timely payments"?

19 A. (Zaricki) No.

20 Q. Okay. Last exhibit. Exhibit D please. Can you read
21 just the two underlined paragraphs?

22 A. (Zaricki) "Thank you for contacting me regarding how
23 Liberty Utilities defines a "customer in good
24 standing". I have spoken with our billing and

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 regulatory departments and we have actually never had a
2 situation involving request for a written guarantee
3 from a customer in good standing on behalf of another
4 customer, who was required to pay the company a
5 deposit."

6 "I would note that should such a request
7 be paid of Liberty Utilities we would define a
8 "customer in good standing" as one without late
9 payments or disconnections for a period of twelve
10 months."

11 Q. And, can you read the author of that e-mail? It's at
12 the bottom.

13 A. (Zaricki) Hopefully I don't butcher his last name,
14 Michael Licata, the Director of Government and
15 Community Relations at Liberty Utilities.

16 Q. Now, does this definition match the definition you were
17 given by customer service representatives of that very
18 same company?

19 A. (Zaricki) No, it does not.

20 Q. Based on this new evidence, would you consider Liberty
21 Utilities to have a common understanding of "good
22 standing" internally at their organization that all
23 employees know?

24 A. (Zaricki) I would not.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Q. Would you consider Eversource's definition of "good
2 standing" of "twelve timely payments" to be common
3 among the utilities in New Hampshire?

4 A. (Zaricki) No.

5 Q. Now, as a state representative, what do you take into
6 account when drafting bills that may become laws?

7 MR. FOSSUM: I guess I would object to
8 that question. I'm not certain what the relevance of that
9 question would be to the issues that we're here to discuss
10 today.

11 CHAIRMAN HONIGBERG: I have the same
12 question. What is the relevance of that question to what
13 we're considering here today?

14 MR. FISHER: Maybe I can clarify.

15 BY MR. FISHER:

16 Q. What do you take into account with your wording when
17 you draft a bill?

18 CHAIRMAN HONIGBERG: Before you answer
19 that question, what is the relevance of the
20 Representative's view on drafting?

21 MR. FISHER: I'm trying to establish
22 that, when a state legislator is drafting legislation,
23 that he would, of course, make sure that the wording is
24 plainly understood by a reasonable person.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 CHAIRMAN HONIGBERG: Ooh.

2 MR. FOSSUM: I object.

3 CHAIRMAN HONIGBERG: The jokes almost
4 write themselves. I think we would take administrative
5 notice of the fact that draftsmanship is extremely
6 important in legislation, as well as rules, which have the
7 force and effect of law.

8 So, I think we will accept the
9 significance of being careful with how one uses words.

10 MR. FISHER: Okay. I only have one
11 final question.

12 BY MR. FISHER:

13 Q. Which you consider Eversource's definition of "good
14 standing", "twelve timely payments", to be a commonly
15 understood definition among the general public in New
16 Hampshire?

17 A. (Zaricki) No.

18 MR. FISHER: Thank you. I have no other
19 questions.

20 CHAIRMAN HONIGBERG: Mr. Fossum.

21 MR. FOSSUM: Thank you, Commissioners.

22 **CROSS-EXAMINATION**

23 BY MR. FOSSUM:

24 Q. I guess I'll begin where we left off with Mr. Zaricki.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Could I ask initially, in what is Exhibit A and B to
2 Exhibit 2, the transcripts that you had provided,
3 relative to Liberty Utilities and Unitil, were those
4 conversations recorded?

5 A. (Zaricki) Not on my end.

6 Q. So, these -- the transcripts are from your notes and
7 memory?

8 A. (Zaricki) Correct.

9 Q. Was there anyone else who listened to those
10 conversations that you're aware of?

11 A. (Zaricki) Again, not on my end.

12 Q. Okay. So, when you're representing the questions to
13 the representatives of these companies and their
14 responses, this is your statement of what they said,
15 rather than a transcription of their words?

16 A. (Zaricki) This is transcribed from immediate memory as
17 we are speaking.

18 Q. With respect to Exhibit A, the document relating to the
19 conversation with Liberty Utilities, you read a section
20 of your document where it states, if I'm looking at the
21 right part, that they "consider a customer in good
22 standing to be one who has not missed or been late on
23 more than three payments", is that --

24 A. (Zaricki) Yes.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Q. You did read that section. When you asked about a time
2 frame, did you direct that time frame to the past or
3 the future?

4 A. (Zaricki) Could you clarify please?

5 Q. Well, you asked about "a length of service requirement"
6 relative to their payment history. Was that a
7 reference to the history of their payment?

8 A. (Zaricki) Yes. I was asking exactly what they would
9 need to do to be in good standing as an existing
10 customer.

11 Q. So, by your understanding, you were asking whether the
12 three payments that they were referring to had to do
13 with three payments made historically?

14 A. (Zaricki) Yes. That was my understanding.

15 Q. So, if I'm reading this correctly then, if a customer
16 had been a customer of, say, Liberty Utilities for
17 fifteen years, just hypothetically, and had been late
18 or missed three payments, that history would be
19 relevant in determining if they're in good standing?

20 A. (Zaricki) According to this representative. I don't
21 work for Liberty. So, I couldn't tell you.

22 Q. When you were asking the questions of the Liberty
23 Utilities representative, did you inform the
24 representative that you were looking for information

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 about instances where a customer has asked to provide a
2 guarantee on behalf of another customer?

3 A. (Zaricki) I did not. I specifically asked about how
4 they would define a "customer in good standing".

5 Q. But, later, it would appear that, by e-mail, there was
6 a question about "in good standing" relative to
7 "providing a guarantee". Is that what the e-mail
8 included as Exhibit D is showing?

9 A. (Zaricki) It would appear to be so. I would point out
10 to that end that, if you look, this is not a
11 correspondence by me, but by Representative Fisher.

12 Q. No, I understand. So, is it possible then that, when
13 you were asking about "a customer in good standing"
14 over the telephone, and not asking about "a good
15 standing for purposes of providing a guarantee", that
16 that would be the difference in the responses between
17 the telephone representative and the e-mail statement?

18 A. (Zaricki) I suppose it's possible. But I think this --

19 Q. Okay. Thank you. That's what I was looking for. I
20 have a similar question about the transcript of the
21 discussions with the representative at Unitil. Did you
22 ask the representative at Unitil whether your questions
23 were about "customer in good standing for purposes of
24 providing a guarantee"?

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 A. (Zaricki) No.

2 Q. And, I have one final question for Representative
3 Zaricki. Are you aware if the New Hampshire Electric
4 Cooperative is subject to the deposit rules in Puc
5 1203.03?

6 A. (Zaricki) I am not sure, off the top of my head.

7 Q. Would you accept that they are not regulated by those
8 rules?

9 A. (Zaricki) I'll trust you.

10 Q. And, would that change your opinion of the statements
11 that they provided in that e-mail?

12 A. (Zaricki) My opinion?

13 Q. If you're willing to accept that they're not regulated
14 by the rule that we're here to discuss, then I would
15 ask, does that change your opinion about whether there
16 is an issue with them having a different interpretation
17 of the requirements for "good standing"?

18 A. (Zaricki) No. I think they're still a utility.

19 Q. Okay. Mr. Fisher, you provided us with what is
20 Exhibit G?

21 A. (Fisher) That's correct.

22 Q. And, that's, as you described, a "letter in good
23 standing" from your landlord?

24 A. (Fisher) That is correct.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 Q. Do you have a lease with your landlord, Mr. Fisher?

2 A. (Fisher) Yes.

3 Q. Did you have to apply for that lease?

4 A. (Fisher) Yes.

5 Q. And, what kind of information did they ask for when you
6 applied for that lease?

7 A. (Fisher) It's difficult for me to list all of the
8 information during the application period. The
9 application process did involve a credit check, as well
10 as basic information about my person.

11 Q. Did they ask any questions -- you said they "did a
12 credit check". So, did they ask any questions about,
13 say, your income or employment history?

14 A. (Fisher) Yes.

15 Q. Did they require you to pay a deposit as part of your
16 lease agreement?

17 A. (Fisher) They did.

18 Q. Even after filling out all of that information, did the
19 landlord, to the best of your knowledge, have an
20 obligation to rent you an apartment or could the
21 landlord have refused?

22 A. (Fisher) At which point?

23 Q. After you filled out the application for the lease and
24 provided them all of the information that they

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 requested, could the landlord still refuse to rent?

2 A. (Fisher) They, to my knowledge, had the ability to
3 refuse that, until the point at which I paid the down
4 payment, the deposit.

5 Q. Mr. Fisher, do you know, can a utility refuse to
6 provide service?

7 A. (Fisher) I am unaware of the laws governing that.

8 Q. Okay. Thank you. And, for Mr. Youssef, just a couple
9 of short questions. You had -- I apologize. If I'm
10 following the timeline of the statements that you said
11 before, that normally, and stop me if I misstate
12 please, when you provide services, then you render a
13 bill, that you expect to be paid within 30 days, is
14 that correct?

15 A. (Youssef) That's correct. Yes.

16 Q. And, if not, then they receive a notice that asks them
17 to pay within 45 days, is that correct?

18 A. (Youssef) Perhaps I was unclear when I was originally
19 describing it. They'll get the bill -- they will get
20 the bill, and we expect it paid within 30 days. If
21 it's not paid, we issue another bill, or like a
22 "reminder" statement, --

23 Q. Okay.

24 A. (Youssef) -- saying "We'd like you to pay this within

[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 the", you know, "immediate future." At 45 days, they
2 get another statement. Rather than issuing monthly
3 statements, we kind of -- we expect to hold things a
4 little closer.

5 Q. And, then, if the customer hasn't paid at 60 days?

6 A. (Youssef) They're just -- they're shut off,
7 essentially, until they make good on their bill.

8 Q. And, then, is it your testimony, as soon as they make
9 good on their bill, they're in good standing with you?

10 A. (Youssef) Correct. Yes.

11 Q. Hypothetically, if you had a customer who didn't pay
12 for 70 days, and then paid, that customer would be in
13 good standing with you?

14 A. (Youssef) Yes. Actually, more than hypothetically,
15 this actually just happened. I was just with a client
16 the other day who had a bill outstanding from March, if
17 you can believe it. And, they had some computer
18 "emergency", and they realized they were in arrears.
19 And, they said "Come on up, we have a check for you.
20 And, while you're there, can you blah, blah, blah."
21 And, I, of course, obliged.

22 Q. Now, if this -- I guess I'll continue on with that
23 example. If that customer had a history of doing that
24 over, say, a period of two years, --

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 A. (Youssef) This particular customer has a history of
2 five years doing that.

3 Q. And, that customer, simply by paying up, returns to
4 good standing with your company?

5 A. (Youssef) Correct. Yes.

6 Q. But if --

7 A. (Youssef) I liken it to an elastic band. I mean, it's,
8 you know, it gets extended, and then it returns, it
9 extends and it returns. And, unfortunately, I wish all
10 customers paid their bill on time, but it's just not
11 the way it is. Especially in this economy, I'm
12 finding.

13 Q. Now, until that customer pays, you refuse to provide
14 services for that customer? Is that generally how you
15 handle that?

16 A. (Youssef) Yes. And, of course, we have -- we make
17 exceptions periodically, customers, our bigger
18 customers, that may be waiting on payments from their
19 customers, you know, we try to work with people.
20 That's generally the approach we try to take, is to be
21 reasonable.

22 Q. And, are there any guidelines or regulations that your
23 business must adhere to in determining whether a
24 customer is or is not in good standing?

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 A. (Youssef) Not that I'm aware of, no.

2 Q. So, all of these decisions that you make about "good
3 standing" are entirely based on your own assessment of
4 what's an appropriate way to run your business?

5 A. (Youssef) I would say it's more of an adoption of my
6 experiences, my common understanding, as you might say.
7 It is common. And, I wanted to kind of pay that
8 forward in adopting my policies and creating my
9 policies, as somebody who has many accounts with many
10 different types of entities, people, organizations, so
11 on and so forth.

12 Q. But, I guess, so, just for clarity, the short answer is
13 that "this is your policy"? It's not --

14 A. (Youssef) That's correct.

15 Q. It's not based on a rule or regulation or a law that
16 you're aware of?

17 A. (Youssef) That's correct. Yes.

18 MR. FOSSUM: Thank you. That's all I
19 had for now.

20 CHAIRMAN HONIGBERG: Mr. Sheehan, do you
21 have any questions for the witnesses?

22 MR. SHEEHAN: I do not. Thank you.

23 CHAIRMAN HONIGBERG: Commissioner Scott.

24 COMMISSIONER SCOTT: Thank you. Thanks.

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[WITNESS PANEL: Fisher~Zaricki~Youssef]

1 I think, for Representative Zaricki, I had a quick
2 question, I think to follow on with Mr. Fossum's.

3 BY COMMISSIONER SCOTT:

4 Q. On the survey you did for the utilities, I was curious
5 if -- I got the text, obviously, so, I understand what
6 you said to the utilities.

7 A. (Zaricki) Yes.

8 Q. For Unitil, similar it looks like for Mr. Licata, and
9 you did get his last name right -- correct, by the way,
10 he seemed to be answering in the context of this rule
11 for a guarantor. I was curious, if you had presented
12 that question to Unitil, in the context of "their
13 definition of "good standing" in providing a
14 guarantee", do you think you might have gotten a
15 different answer?

16 A. (Zaricki) It's possible. But I think the context I
17 gave, to overuse the phrase, it's the common context of
18 "customer in good standing". And, that's what we're
19 looking for, is the common understanding of the term,
20 and that's what I think I got.

21 COMMISSIONER SCOTT: Understood. Thank
22 you.

23 CHAIRMAN HONIGBERG: Commissioner
24 Bailey?

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[WITNESS: Johnson]

1 COMMISSIONER BAILEY: No questions.

2 Thank you.

3 CHAIRMAN HONIGBERG: Mr. Fisher, do you
4 have any follow-up questions for your witnesses?

5 MR. FISHER: No. Thank you.

6 CHAIRMAN HONIGBERG: Thank you,
7 gentlemen. You can return to your seats.

8 Mr. Fisher, you have no other witnesses,
9 correct?

10 MR. FISHER: I do have a question for
11 Janice, but I believe she's going to be called.

12 CHAIRMAN HONIGBERG: Right.

13 MR. FISHER: Yes.

14 CHAIRMAN HONIGBERG: That's going to be
15 the Company's witness. You'll get a chance to ask her
16 questions. Mr. Fossum.

17 MR. FOSSUM: If there are no other
18 witnesses, then I would ask Ms. Johnson to take the stand.

19 (Whereupon *Janice Johnson* was duly sworn
20 by the Court Reporter.)

21 **JANICE JOHNSON, SWORN**

22 **DIRECT EXAMINATION**

23 BY MR. FOSSUM:

24 Q. Good afternoon, Ms. Johnson.

[WITNESS: Johnson]

1 A. Hi.

2 Q. Could you please state your name and your employer for
3 the record please.

4 A. Janice Johnson, Eversource.

5 Q. And, just for clarity for all here, when we're
6 referring to "Eversource", are we also referring to
7 what used to be known as "PSNH" or "Public Service
8 Company of New Hampshire"?

9 A. Yes.

10 Q. Now, what is your position with Eversource?

11 A. I'm a Credit Supervisor.

12 Q. And, what are your responsibilities in that position?

13 A. Overseeing the Credit Department for the State of New
14 Hampshire for Eversource, managing nine
15 representatives, and managing the work for Eversource
16 in New Hampshire.

17 Q. And, does that work include overseeing deposits --
18 customer deposits and guarantees?

19 A. Yes.

20 Q. How long have you been employed by Eversource?

21 A. Twenty-six years.

22 Q. And, how long have you held your current position?

23 A. Fifteen years.

24 Q. And, has that entire time been spent in the Credit

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[WITNESS: Johnson]

1 Department?

2 A. Yes.

3 Q. Are you familiar with the Commission's rules relating
4 to customer deposits and customer guarantees?

5 A. Yes.

6 Q. Do you apply those rules to your activities regularly?

7 A. Yes.

8 Q. About how often would you say you do?

9 A. About ten to fifteen times a week.

10 Q. And, that "ten to fifteen times a week", that's for
11 customer deposits or customer guarantees?

12 A. Customer guarantees.

13 Q. Are you familiar with the Company's guaranty policy,
14 that for the record was entered as "Eversource
15 Exhibit 5", in what has been marked as "Exhibit 4" for
16 the purposes of the hearing?

17 A. Yes.

18 Q. Now, that policy states that it was in effect as of May
19 of 2012, is that correct?

20 A. That policy was rewritten then, yes.

21 Q. It was rewritten. How was it rewritten?

22 A. Just into a new format.

23 Q. But it's the same, in substance, it is the same policy?

24 A. Yes.

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[WITNESS: Johnson]

1 Q. And, how long has that been the policy?

2 A. Twenty years.

3 Q. In the twenty years that that's been the policy that
4 you're aware of, and having applied it ten to fifteen
5 times per week, has there -- have you ever had any
6 reason to question that this policy does not align with
7 the Commission's regulations?

8 A. No.

9 Q. Has anyone from the Commission ever contacted you to
10 specifically tell you that the policy does not align
11 with Commission's regulations?

12 A. No.

13 Q. So, getting to the heart of the issue here, for a
14 customer guaranty, for a customer to be considered "in
15 good standing", what's required of them?

16 A. Twelve months of consecutive good credit with us.

17 Q. And, that applies to every customer?

18 A. Every customer.

19 Q. To the best of your knowledge, why would a customer
20 with fewer than twelve payments not be considered "a
21 customer in good standing" for purposes of providing a
22 guaranty?

23 A. Because they're still considered a new customer with us
24 until they have twelve months of good credit with us.

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[WITNESS: Johnson]

1 CHAIRMAN HONIGBERG: Mr. Fossum, just a
2 second. Ms. Johnson, can you do me a favor and slide that
3 microphone that way. No, see. So, when you're talking to
4 Mr. Fossum, you're talking to the microphone.

5 WITNESS JOHNSON: Okay.

6 CHAIRMAN HONIGBERG: Because you fade in
7 and out as you move. So, it would be helpful. Thank you
8 very much.

9 MR. FOSSUM: I only have a couple other
10 questions.

11 BY MR. FOSSUM:

12 Q. Ms. Johnson, you heard Mr. Fisher argue that a
13 "customer in good standing" should be considered "one
14 who's paid all of their bills without any reference to
15 their payment history". Did you recall hearing that?

16 A. Yes.

17 Q. Do you agree with that?

18 A. Not from an Eversource perspective, no. You should
19 have twelve months of good standing with Eversource to
20 be a customer of good standing.

21 Q. And, I guess, just to bring it to close, why is that?

22 A. Because you're showing us that you're paying on time
23 and that you're paying your bills and that you're a
24 good customer. We don't give back a deposit to a

[WITNESS: Johnson]

1 customer unless there are twelve months of good
2 standing with us. So, we use the same standard. You
3 don't get a deposit back unless you're twelve months of
4 good standing with us. So, we use that same rule, is
5 that you have twelve months of good credit to be a
6 guarantor.

7 MR. FOSSUM: Thank you. I have nothing
8 further.

9 CHAIRMAN HONIGBERG: Mr. Fisher, do you
10 have questions for Ms. Johnson?

11 MR. FISHER: Yes. Thank you.

12 **CROSS-EXAMINATION**

13 BY MR. FISHER:

14 Q. Just briefly, you described a customer who has had less
15 than twelve months of service as a "new customer", is
16 that correct?

17 A. Correct.

18 Q. Is it possible for a new customer to be in good
19 standing?

20 A. No. You have to have twelve months of good credit with
21 us to be a good standing customer.

22 Q. So, if a new customer had an account for eleven months
23 and paid their bill on time every single month without
24 one arrearage, they would not be considered a "customer

[WITNESS: Johnson]

1 in good standing"?

2 A. Twelve months.

3 Q. Would you consider them a "customer in bad standing"?

4 A. No. They would be meeting, you know, an okay customer.

5 It has to be twelve months to be "good standing".

6 MR. FISHER: That's all my questions.

7 Thank you.

8 CHAIRMAN HONIGBERG: Mr. Sheehan, do you
9 have any questions for Ms. Johnson?

10 MR. SHEEHAN: I do not. Thank you.

11 CHAIRMAN HONIGBERG: Commissioner Scott?

12 COMMISSIONER SCOTT: I don't think so.

13 CHAIRMAN HONIGBERG: Commissioner

14 Bailey?

15 COMMISSIONER BAILEY: I just have one.

16 BY COMMISSIONER BAILEY:

17 Q. Do you have Exhibit 5 that's attached to Exhibit 4?

18 A. No.

19 COMMISSIONER BAILEY: I just need

20 Page 3, or she just needs Page 3.

21 (Atty. Fossum handing document to the
22 witness.)

23 WITNESS JOHNSON: And, I need my

24 glasses. I cannot read this.

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[WITNESS: Johnson]

1 COMMISSIONER BAILEY: Well, I can read
2 to you the sentence. Well, you probably want to see it
3 yourself.

4 CHAIRMAN HONIGBERG: Off the record.
5 (Brief off-the-record discussion
6 ensued.)

7 WITNESS JOHNSON: Thank you.

8 COMMISSIONER BAILEY: You good?

9 WITNESS JOHNSON: Good.

10 BY COMMISSIONER BAILEY:

11 Q. Okay. In the Overview section, the second sentence
12 says: "The guarantor must have or once had service
13 with PSNH." Can you tell me when it would be
14 applicable, based on everything that we've heard, that
15 it would be appropriate for a guarantor to once have
16 had service with PSNH?

17 A. Well, if you, like, if you moved and come back, and if
18 you want to be a guarantor for somebody, we'll look at
19 your old history that you had with us and see if you
20 had twelve months of good history with us.

21 Q. But you would also have to be a current customer?

22 A. Correct.

23 COMMISSIONER BAILEY: Okay. Thank you.

24 CHAIRMAN HONIGBERG: That's it?

1 COMMISSIONER BAILEY: Yes.

2 CHAIRMAN HONIGBERG: Actually, I don't
3 have any questions for Ms. Johnson. Mr. Fossum, I
4 wouldn't think you have any follow-up, but do you?

5 MR. FOSSUM: I do not.

6 CHAIRMAN HONIGBERG: All right. You can
7 return to your seat, Ms. Johnson. Thank you.

8 Am I correct that there are no other
9 witnesses to be called?

10 (No verbal response)

11 CHAIRMAN HONIGBERG: Okay. Is there any
12 objection to striking the identification from the four
13 exhibits and all of the subexhibits that have been
14 offered? Mr. Fossum?

15 MR. FOSSUM: No objection.

16 MR. FISHER: No objection.

17 MR. SHEEHAN: No objection.

18 CHAIRMAN HONIGBERG: Is there anything
19 else we need to do, before we allow you to sum up briefly?

20 (No verbal response)

21 CHAIRMAN HONIGBERG: Seems not.
22 Mr. Sheehan, do you have anything you want to offer at
23 this time?

24 MR. SHEEHAN: If the Commission cares to

1 hear Staff's position, I can say it in two minutes.
2 Otherwise, I will continue my silence here in the back
3 row.

4 CHAIRMAN HONIGBERG: Oh, I think we're
5 interested in Staff's position.

6 MR. SHEEHAN: Thank you. Both parties
7 in this case quoted I think the right law in interpreting
8 a state agency's regulation. And, that is you look at the
9 language, you try to, I'll quote, Mr. Fossum quoted a case
10 that says "We interpret disputed language of a statute or
11 regulation in the context of the overall statutory or
12 regulatory scheme and not in isolation. We seek to
13 effectuate the overall legislative purpose and to avoid an
14 absurd or unjust result. We can neither ignore the plain
15 language of the legislation nor add words which the
16 lawmakers did not see fit to include." And, here --
17 that's the *Boviard*, B-o-v-i-a-r-d case.

18 Here we have a situation where the
19 phrase is not defined in the section with the guarantor,
20 but is defined, as it's been referenced, that the deposit
21 can be returned after twelve months of good standing.

22 And, Staff's position is, you don't look
23 at just the one regulation, which is (i), but you look at
24 the overall effect of -- the overall purpose of the

1 deposit rule, which is .03, and then you can pick up the
2 definition that, perhaps in a better world, would have
3 been included in (i) where it isn't.

4 So, it's Staff's position that you want
5 to read these rules in total and get a fair understanding
6 of what was intended with these regulations, is you can
7 pick up the "twelve month requirement" from the "deposit
8 return" piece of the rules. And, that's what Eversource
9 has done in this case, and they have obviously been
10 consistent in doing it for twenty years.

11 And, the Commission's role now, in
12 adjudicating this dispute, is "what was reasonable?" And,
13 clearly, what -- it's Staff's position, what they did was
14 reasonable. And, it really is a legal argument, not a
15 factual argument. To the extent you look at the facts,
16 the most compelling ones would be what the other utilities
17 did. With all due respect, what other businesses do is
18 not relevant necessarily to the utility context.

19 Liberty clearly agrees, has the same
20 policy as Eversource. The Co-op is not regulated by these
21 rules, and they actually have a stricter standard. And,
22 Unitil did not really give an answer, I submit. The
23 transcript of the phone call, it suggests the question by
24 Mr. Zaricki was "assuming I'm applying for a loan, would I

1 be "in good standing"? What's your definition of "good
2 standing"?" So, in fact, they changed the context from
3 "guarantor" to "assume I'm applying for a loan". So, I
4 don't think the evidence here by Unitil is helpful at all.

5 So, for those reasons, we think the
6 application of the policy here was reasonable on behalf of
7 Eversource.

8 CHAIRMAN HONIGBERG: Mr. Fossum.

9 MR. FOSSUM: Thank you. I would echo
10 virtually everything that the Staff has just set out in
11 its argument to you. This is a legal interpretation of a
12 Commission regulation that utilities accept certain
13 assurances in place of a deposit, including the written
14 guaranty of a customer of good standing of the utility.
15 So, this is a question about "what it means to be "in good
16 standing of the utility"?"

17 And, as we had noted in our prior legal
18 memorandum that was submitted, I believe marked as
19 "Exhibit 3", that, when the term is not defined in the
20 statute or the rule, we interpret it, as Mr. Sheehan has
21 just said, in light of the other regulations that surround
22 it. In looking at the other relevant regulations, we
23 would look to the entirety of Rule 1203.03 relating to
24 deposits. Which I would note that rule is adopted -- that

1 full section is adopted pursuant to a single statutory
2 authority. 1203.03(a) notes that a customer can be
3 required to have a deposit when they're a new customer, if
4 they're "unable to furnish evidence of an intent to remain
5 at a location for twelve consecutive months".

6 1203.03(e) states that, when reviewing
7 whether to request a deposit, the period of review for the
8 customer's history is "twelve months".

9 1203.03(j) notes that a guarantee would
10 be returned once there have been "twelve months of
11 consecutive payments".

12 And, 1203.03(l) discusses that, when
13 you're doing a review to calculate the amount of a
14 deposit, that review includes twelve months.

15 I think it more than reasonable to apply
16 twelve months to a determination of a customer being in
17 good standing under these rules.

18 I would also contend that having no
19 historical information is not an appropriate
20 interpretation of these rules. For example, if I was a
21 customer with a poor payment history, numerous late
22 payments, perhaps even disconnected, and I might even have
23 a deposit on my own account. But, on one day, I have
24 become current in my payments, by that standard, I would

1 now be deemed "in good standing" and able to provide a
2 guaranty on behalf of another customer despite my history.
3 I don't believe that to be a reasonable interpretation.

4 I would echo Mr. Sheehan's comments
5 relative to the information provided about the activities
6 of the other utilities. And, I believe that the only
7 specific evidence that has been presented about what the
8 other utilities do is the e-mail message from Liberty
9 Utilities that applies precisely the same standard that
10 Eversource has applied.

11 As Ms. Johnson testified, this is what
12 we do every day. Ms. Johnson has done this for twenty
13 years, fifteen times a week. And, at no point has had any
14 reason to believe that what -- the interpretation that we
15 are using is anything other than correct and appropriate,
16 and that it adequately and reasonably applies the rules
17 that have been written by the Commission.

18 Eversource has done what the law would
19 expect and what the Commission would expect, and would ask
20 that the Commission uphold its interpretation and
21 application of the rules in this instance.

22 CHAIRMAN HONIGBERG: Mr. Fossum, I have
23 a question. I know one of the questions you asked of one
24 of Mr. Fisher's witnesses distinguished between a

1 regulated utility, like yourself, and a private business
2 that's not subject to any set of laws and regulations in
3 developing rules for how to deal with customers. Can you
4 flesh out for me the significance of that line of
5 questioning please?

6 MR. FOSSUM: The intent, to the extent
7 that you're asking about my intent in asking the question,
8 was to indicate that, regardless of what Eversource might
9 wish to apply or think is appropriate to apply, if it had
10 no regulations to look at, then we could apply whatever
11 made sense to us. And, that could change over time. We
12 are not that way. We are a regulated business. So, our
13 interpretation needs to be consistent with the rules that
14 apply to us. And, unless the rule changes, it should not
15 change. So, that was my intention, was to indicate that,
16 unlike a truly private business, we do not have the
17 flexibility to change our interpretations of things like
18 "customer in good standing" as we see fit.

19 CHAIRMAN HONIGBERG: Thank you. Mr.
20 Fisher. And, we already heard your opening.

21 MR. FISHER: Yes.

22 CHAIRMAN HONIGBERG: So, I assume this
23 is going to be a little different from that?

24 MR. FISHER: It will be. Thank you. I

1 will try and keep it brief, but I'm afraid it's about the
2 same length. So, I apologize in advance.

3 We could all argue what a reasonable
4 regulation could be. And, I think that Mr. Fossum here
5 has done a considerably good job of making argument for
6 what a reasonable regulation could be. And, I would be
7 happy to come back here at a future date and discuss what
8 reasonable regulations could be. That's my other job.
9 But, today, I'm here not as legislator, but as a citizen
10 governed by current law. And, reasonability is not what
11 we're here to determine. We are here to determine what
12 the regulation says today and what the common definition
13 of "good standing" is.

14 And, the evidence and the testimony, I
15 believe, makes it clear that the Eversource's specific
16 definition is not common. Not necessarily uncommon to
17 themselves, but to the people that this regulation also
18 governs. This regulation isn't here only to govern
19 Eversource or the utilities, but instead to govern their
20 interactions with the general public, who must also
21 understand those rules.

22 Now, they have made a very good
23 indication that this definition has existed in their
24 corporation for a long time. And, I'm afraid that's not

1 much of a defense against breaking a rule, because you can
2 break a rule for a long time, it doesn't make it not
3 against the law.

4 Now, the common definition is what the
5 citizens of New Hampshire depend on to understand and
6 follow the rules. Adopting a specific and unknown
7 definition is a danger precedent to set, especially doing
8 so midstream. And, it punishes the reasonable person for
9 following the rules as written. It punishes those for
10 doing something they did not know they should have done,
11 which is inequitable and unfair.

12 Eversource's definition of "good
13 standing" is, without a doubt, and with no uncertainty, a
14 very specific and very uncommon definition, that does not
15 meet any of the criteria that's required for a common
16 definition.

17 I'm just going to briefly go over these,
18 because I know we've already heard all these. We did hear
19 Representative Zaricki's experiences with the various
20 utilities. And, we also heard my experience contacting
21 utilities. The example of Liberty Utilities is that they
22 do give different definitions, depending on who you speak
23 with. If our goal was to get a very specific definition
24 of "good standing", that would make sense, but we were

1 here to find the common understanding.

2 As a utility customer, if my desire was
3 to find a specific definition of "good standing" that
4 differed from the common understanding, I'd be more
5 confused after contacting the utilities, as there was
6 little in the way of clarification or agreement from me,
7 as a citizen, regardless of what the utilities believe
8 might be common. But we aren't considering only the
9 utilities to determine a common understanding. We have to
10 consider every facet of "common understanding".

11 And, I'm just going to skip over a
12 little bit here, so we can get out of here sooner.

13 CHAIRMAN HONIGBERG: I'm going to have a
14 question for you when you're done, so --

15 MR. FISHER: Sure. Sure. Now, in both
16 my legal summary, as well as Eversource's, they did quote
17 the Supreme Court, *Vector Marketing versus Department of*
18 *Revenue*, 2008, "When interpreting agency rules, where
19 possible, we ascribe the plain and ordinary meanings to
20 the words used."

21 Now, they have also used another quote
22 that was a little more illuminating from the *Boviard*
23 *versus Department of Admin. Services*, 2014. And, I'm
24 going to just reread it real quick. "We interpret

1 disputed language of a statute or regulation in the
2 context of the overall statutory or regulatory scheme and
3 not in isolation." Now, it also says that we aren't to
4 add words. But the beginning of that is important. Using
5 the "twelve months" standard has been referenced numerous
6 times in the administrative rules, and each and every time
7 that "twelve months" applies not to a potential guarantor,
8 not to a welfare agency, not to a bank. All those things
9 are in Paragraph (i). But, instead, they apply to the
10 original utility account. This is a surety that we're
11 talking about. It is a backup plan for when an electric
12 account is defaulted. Every example is not for an
13 electric account, but instead for a guarantor. There is
14 no text in the administrative rule that indicates that
15 there is anything other than the common definition of
16 "good standing" in the administrative rules.

17 We cannot leave here today having added
18 words to the administrative rule that simply do not exist.
19 It applies the law unevenly and arbitrarily to the average
20 reasonable person that would force an uncommon definition
21 on them midstream after-the-fact, and would punish them
22 for not knowing that the law would be interpreted
23 differently in the future, not by the overseeing body, but
24 instead by the very company the overseeing body was put in

1 the place to govern.

2 To conclude, Eversource has a very
3 specific definition: "Twelve months, twelve timely
4 payments". That's "good standing" to them. Businesses do
5 not use that definition, the government does not use that
6 definition, reasonable people do not use this definition.
7 But this phrase "good standing" is used in law, law that
8 governs business and people. For there to be any rule of
9 law in New Hampshire, the words written within the laws
10 must apply fairly and be commonly understood, to both the
11 people and the companies that the people do business with.

12 And, mostly importantly, the rules
13 cannot be written or rewritten midstream to suit a single
14 company at any time. Thank you.

15 CHAIRMAN HONIGBERG: I have a question,
16 Mr. Fisher, regarding what is the e-mail from Mr. Licata
17 from Liberty.

18 MR. FISHER: Yes.

19 CHAIRMAN HONIGBERG: We don't have the
20 question that you asked. But would it be a fair
21 assumption that you asked a question that really was in
22 the context of this dispute you're having with Eversource,
23 given his response?

24 MR. FISHER: Actually, we had had a

1 phone call, and he elected to respond via e-mail. In the
2 phone call, I had asked him not the context of "good
3 standing". But, upon a second conversation with him, he
4 had asked me for my e-mail address, and he had apparently
5 done some research on me and determined that was the
6 context.

7 CHAIRMAN HONIGBERG: Given the date of
8 the exchange, it's likely that he did some online research
9 in our docket.

10 Commissioner Scott, do you have a
11 question?

12 COMMISSIONER SCOTT: I think so. I was
13 just curious, Representative, again, looking at the text
14 of (i), does the -- obviously, a "customer in good
15 standing" is the language we're talking about. "Of the
16 utility", I assume that extra language, it sounds like it
17 doesn't -- it doesn't really modify anything in your eyes,
18 is that correct?

19 MR. FISHER: Well, "good standing of the
20 utility" just means that the account can't just be with,
21 you know, your local golf club.

22 COMMISSIONER SCOTT: But you don't read
23 that as some relationship with the utility, in that, in
24 the utility's eyes, it's "good standing"?

1 MR. FISHER: It does mean that you need
2 to be a "customer in good standing of the utility". I'm
3 not sure what precisely further I could clarify, I guess.

4 COMMISSIONER SCOTT: I think that's
5 sufficient.

6 MR. FISHER: Okay.

7 COMMISSIONER SCOTT: But I appreciate
8 it.

9 CHAIRMAN HONIGBERG: I have another
10 question. Mr. Fossum made the distinction somewhat
11 between the regulated utility context and the private
12 business context, like Mr. Youssef's. Is that at all
13 significant to you that Eversource has to take customers,
14 it can't pick and choose, and, with respect to the lease
15 situation, unlike the prospective lessor of your brother,
16 they can't reject prospective customers? And, to further
17 the thought, if they have uncollectible debt from their
18 customers, that gets passed along generally to the rest of
19 the ratepayers. And, so, they have an obligation beyond
20 just to their own bottom line, but to the other ratepayers
21 that we're tasked with looking out for. Is that in any
22 way significant to your view of this?

23 MR. FISHER: I think it's important to
24 note that, during that interchange, Mr. Fossum was right

1 to point out that they cannot deviate from the regulation,
2 and in a way that does put them at a bit of a
3 disadvantage. They have to use what's the common
4 understanding. The frustration I have, of course, is that
5 that common understanding would be the same as what the
6 rest of New Hampshire would normally consider.

7 If you were asking me what I think a
8 reasonable regulation would be, I would say that, yes, we
9 could probably find a better way to write this rule, that
10 would protect everyone's interests, including
11 Eversource's. However, I believe the primacy of the
12 written rule is that we don't get to decide, after it's
13 written, how it was interpreted. We have to -- there's a
14 due process to rewrite the rule to say what it is that
15 perhaps is more reasonable.

16 CHAIRMAN HONIGBERG: Anything further
17 from anyone?

18 MR. FOSSUM: No.

19 CHAIRMAN HONIGBERG: Seeing nothing.
20 Thank you all very much. We will adjourn and issue an
21 order as soon as we're able. Thank you.

22 MR. FISHER: Thank you.

23 **(Whereupon the hearing was adjourned at**
24 **2:44 p.m.)**